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No. 83-19

IN THE
SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1983

STUART R. CRANE and BARBARA CRANE, his wife,
Appellants,

-vs-

STATE OF MICHIGAN, SYDNEY D. GOODMAN, HARRY W. JURY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMER WOJO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS, Jointly and Severally,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

STATEMENT IN OPPOSITION TO MOTION TO DISMISS OF APPELLEES

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QUESTIONS PRESENTED BY APPELLEES

1. Whether Appellants may invoke the jurisdiction of this Court pursuant to 28 USC 1252, when the appeal neither arises from a judgment, decree or order of a federal court, nor involves the constitutionality of an Act of Congress and is not taken in conformity with statute and the Supreme Court Rules.

2. Whether the United States Supreme Court has jurisdiction over an appeal when the federal questions presented were not raised, preserved, nor passed upon, either expressly or implicitly, by any of the courts of the State of Michigan which considered Appellants' claims.

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STATE OF MICHIGAN, SYDNEY D. GOODMAN, HARRY W. JURY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMER WOJNO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS, Jointly and Severally,
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STATEMENT IN OPPOSITION TO MOTION TO DISMISS OF APPELLEES

The Motion To Dismiss of Appellees[1] demonstrates the disdain with which Appellees view due and orderly process of law, the paucity of reason underlying the decision appealed from and the lengths to which Appellees (represented by the Attorney General of the State of Michigan) will go to avoid establishing any cogency in Michigan law as it relates to governmental immunity and general civil jurisdiction of Michigan Courts over federal civil rights actions involving State associated individuals.

No one was misled by the scrivener's error complained of in mis-citing 28 USC § 1257 as § 1252 relied upon by Appellees as a ground for dismissal.

Appellees admit 28 USC § 1257 is the "relevant jurisdictional statute" (Motion, p. 8). The requirements of 28 USC § 1257 have been met.

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[1] References are designated "Motion p__.

Appellees have no basis whatsoever to support the decision of the Michigan Courts in the case at bar. They wish to exempt Michigan from the rules of law applicable in Federal Courts and all other State Courts. These rules of law are summarily dismissed (as was the Complaint in this case) as being found in a "plethora of federal and state cases" cited in Appellant's Jurisdictional Statement. Apparently the super abundance of authority contrary to the unique position of the Michigan Courts has not been persuasive to those Courts. At first blush (and at last) this calls for examination by this Court by noting probable jurisdiction if the dual system of justice overseen by this Court is to operate consistently, and not for dismissal on a scrivener's error which was not misunderstood and which prejudiced no one.

COUNTER-STATEMENT

The so called ". . . facts underlying this appeal . . ." are recited on pp. 1-4 of the Motion. There is no citation to the record below nor any Appendix filed.

As Appellants pointed out in its Jurisdictional Statement, (p. 4), there is no evidence, no answer, no opinion, in the record. However, to color this Court's view, the Attorney General does say Mr. Crane (one of the Appellants) operates "inner city motels" (Motion, p. 2). What this means as regards legality or morality is not clear. But, it is clear such a conclusion or characterization is not in the record. Also, Appellees must assume that there is something sinister about the names and addresses of the motels appearing on page 2 of the Motion. In another "underlying fact", set forth without citation to record or appendix, the Appellees confided that this Appeal involves ". . . the fourth of eleven lawsuits filed by Mr. Crane . . ." My goodness. (Motion, p. 3) Strongly, this suggests that now is the time to settle the law.

To further color the matter, this Court is assured that Mr. Crane has been guilty of "criminal violations". No

record or Appendix citations are made, and, as a matter of law, it is irrelevant. That it is also false doesn't seem to concern the Appellees.

The Appellees also take comfort from the issuance of a "tax warrant and Notice of levy" but ignore that this is one of Appellees' actions of which complaint is made.

The proceedings to this point which are relevant are:

1. The complaint filed in the Circuit Court for the County of Wayne, State of Michigan, alleged violations of Appellants' Federal constitutional and Federal statutory rights. (See, Appellants Jurisdictional Statement pp. 4-6 and App. D pp. 7-34a)

Appellees admit this on page 3 of their Motion.

2. The Circuit Court dismissed the Complaint on a motion for Accelerated Judgment on the ground it lacked subject matter jurisdiction (App. 5-6 a) stating from the bench that Appellant's remedy was in the Michigan Court of Claims. (App p. 30 a)

3. The Michigan Court of Appeals and Michigan Supreme Court affirmed, (App. pp. 1-4)

4. On July 8th, a Notice of Appeal was filed in the Supreme Court of Michigan and the Jurisdictional statement and related papers of Appellants were filed in this Court.

5. The Jurisdictional Statement mis-cited the Section of the United States Code under which the Appeal was filed on pp. iv., 2 and 17, citing 28 USC §1252 rather than 28 USC §1257.

6. The Motion to dismiss was filed on the grounds that

1. There is no jurisdiction in this Court under § 1252.

2. The issues raised in the Appeal to this Court were not raised below.

REPLY TO ARGUMENT

I.

Appellants will admit that appeals under 28 USC § 1252 are expressly limited to appeals from federal courts holding an act of Congress unconstitutional.

This action was not in a federal court.

Appellees concede 28 USC § 1257 was the "relevant jurisdictional statute upon which Appellants could have based their appeal", but say now that the ninety days allowed under 28 USC § 1257 has passed.

The ninety days had not passed at the time of filing the Notice of Appeal in the Michigan Supreme Court on July 8, 1983.

There has been no surprise.

Reading of 28 USC § 1252 obviously has led the Attorney General to 28 USC § 1257 which he concedes is the relevant statute.

The "C O N C L U S I O N" in the Jurisdictional Statement asks that the Appeal be considered in the alternative as an Application for a Writ of Certiorari, 28 USC § 1252 does not mention this alternative, 28 USC § 1257 does.

The cases cited by Appellees under Argument I of the Motion to Dismiss are not persuasive toward accomplishing dismissal.

The first case cited and quoted from the Appellants, *Ansboro* v *United States* (1895) 159 US 695; 16 S Ct 187, 40 L Ed 310, has absolutely nothing to do with the issue of timely filing. The case dismissed a writ of error under the then appropriate Supreme Court jurisdictional statute which allowed appeals by writ of error, (1) upon certification from the Court below, (2) upon conviction of an infamous crime, and (3) where the constitutionality of a law of the United States was in question. This Court found that the first two

grounds were not involved and the record did not show the constitutionality of a United States Statute was necessarily and directly raised by Ansboro, supra, in ". . . motions to quash, to instruct the jury . . . for new trial, and in arrest of judgment . . . nor to instructions or the refusal of instructions . . .". Reciting these proceedings the Court found no "suggestions" of denial of a constitutional right. Ansboro obviously had a full trial to explore the facts through evidence and the litany of vehicles to raise the issue. Here the only vehicle was the Complaint because Appellants had no trial, no discovery, no evidence, no instructions, etc. The Complaint raised Constitutional issues and violations of Federal statutory rights. By their Motion for Accelerated Judgment, Appellees said that the lack of fact finding made no difference since Michigan's immunity law obviates those issues. *Ansboro*, supra, rather then supporting Appellee's position on Argument I (it has nothing to do with timely filing) really supports Appellants on Argument II. Immediately prior to the portion of *Ansboro*, supra, quoted on page 5 of the Motion to Dismiss, it is said that the violation of the federal rights must be "directly deducible" from the "record". *All* that is "deducible" from the "record" in the summary proceedings below is that Appellants claimed federal rights and Appellees said "not here we are immune because of Michigan law". What is "directly deducible" is that the claimed federal rights are invalid in Michigan.

Shapiro v *Jane Doe* (1970) 396 US 448, 24 L Ed 2d 677, 90 S Ct 641, involves a failure to docket. There is no majority opinion and Appellants discussion involves a dissenting opinion. *Taggert* v *New York*, (1968) 392 US 667; 88 S Ct 2317, 20 L Ed 2d 1360 (1969) is a Per Curiam decision.

Donovan v *Richland County Association* (1982) 454 US 389, 70 L Ed 2d 570, 102 S Ct 713 stands for the proposition that Courts of Appeal have no appellate jurisdiction over District Court decisions where a direct appeal is available to the Supreme Court under 28 USC 1291. The majority in that case (which had been appealed to and decided in

the Court of Appeals) decided that the time that had passed and the erroneous procedural process required dismissal without remand to the District Court so that a proper appeal directly to the Supreme Court could be made. This Court reasoned the passage of time frustrated the purpose of immediate review by the Supreme Court of federal statutes held to be unconstitutional in Federal Court. In the case at bar there was no delay beyond the period contemplated by the "relevant" jurisdictional statute (Motion, p. 8).

II.

The argument of Appellees under ARGUMENT II is just plain wrong.

The case at bar is a case asserting violation of United States Constitutional rights and Federal statutory rights. (Jurisdictional Statement, pp. 4-6; App D, Complaint pp. 9a, 15a, 21a, 23a, App E., Transcript 29a, 3a; Appellees admission on page 3 of Motion).

There was no answer, no discovery, no evidence in the proceedings below.

The Courts below decided that the Circuit Courts of the State of Michigan (courts of original jurisdiction) had no jurisdiction over the subject matter of the Complaint.

At the hearing on accelerated judgment in the trial court below, counsel for the Appellees said:

". . . Plaintiffs were in the wrong Court."

". . . They were not in the proper Court." (App. p. 28a)

The Trial Judge at the same hearing said:

"THE COURT: You can stop right there because that's what it was, determine whether or not this Court has jurisdiction or whether the Court of Claims has jurisdiction to hear your case and your claim of damages.

You see, no matter how you couch it with nice words which suggest Federal jurisdiction and Federal questions, in a case of this kind arising out the set of facts that are here involved that you have urged this case and you have urged in other cases, it all comes out to money damages that you seek.

Now, if you were seeking for equitable relief such as a restraining order or to do something or not to do something, you're in the right court, but under the circumstances if you're looking for money, your claim has got to be in the Court of Claims first. That's where we re at, sir. You're very well versed. You understand exactly what's going on and you're representing yourself. You're not an attorney, and eminently qualified. You have done an outstanding job, in the Court's view, as an attorney, even though you're not. Therefore, I don't think the Court has taken advantage of you, and I certainly don't think Mr. Brockman has taken advantage of you.

The fact is . .

MR. CRANE: These are constitutional questions that . . .

THE COURT: No, these are constitutional questions that can be answered within the realm and within the scope of the judgment that you seek in the Court of Claims. It doesn't mean that they hear your claim there with shutters, with mental shutters. They will listen to all of it, what your contentions are, to decide whether or not you have a claim against the State. That's the place to go.

Now, I'm not going to assess any costs, and I'm not going to assess any attorney fees. The reason I'm doing it is because I think you and your family are properly concerned that you at least have somebody in some form to hear your claim. I don't think you're really — you're aggravated, I think. I think you're mad and

unhappy, but that's neither here nor there. I think you're still entitled to have somebody hear your claim. I think you ought to go to the Court of Claims is the place to have that done.

The Court of Claims of the State of Michigan is a statutory Court of limited jurisdiction over claims against the ". . . State or any of its departments, commissions, boards, institutions, arms or agencies . . ." otherwise not assertible because of Governmental immunity. MCLA 600.6419.

It has no jurisdiction where the claimant has a remedy in Federal Court. MCLA 600.6440.

There can be no jury trial. MCLA 600.6440.

At the heart of this matter is Appellee's pretended dismay that Appellants' "utterly" failed to "articulate" in an "explicit and timely manner" that the state law "as applied" violated federal rights.

This is nonsense.

Counsel for Appellees argues that the case belonged in the Court of Claims, which as here relevant, was established to hear claims otherwise not actionable because of immunity.

If immunity wasn't the ground for the decision below — what was? Appellees don't suggest another ground and they did not raise it below.

Appellees dismiss the "syllogistic" relation to *Scheuer* v *Rhodes*, 415 US 232; 94 S Ct 168; 40 L Ed 2d 90 (1974) because it *was* an *"immunity"* case and *it was* in "Federal District Court" by saying *immunity* was *"never asserted"*, pled, waived or otherwise mentioned in this case in the *state Court*. A fortiori, *Scheuer* v *Rhodes* dictates reversal if this is an immunity case and the same law applies in Michigan Courts as in Federal Courts.

The "plethora of federal and state court cases involving governmental immunity" cited by Appellants and dismissed by Appellees "as inopposite" (Motions, pp. 13-14) certainly teach that the same rules of law are applicable in state and federal court cases. They are applicable to the case at bar.

Cases cited by Appellees state that this Court will not decide issues not decided below.

Appellants take the position that all that was decided below was that federally granted rights could not form the basis of our action in Michigan Courts because of governmental immunity. Appellees do not suggest any other ground.

However, the cases cited (Motion, pp. 10-12) do deserve more detailed examination than given by Appellees. In both *Rohr Aircraft Corp.* v *County of San Diego*, 362 US 628; 80 S Ct 1050; 4 L Ed 2d 1002 (1960), and *Charleston Federal Savings & Loan Association* v *Alderson*, 324 US 182; 65 S Ct 624; 89 L Ed 857, the Court treated the appeal as an Application for a Writ of Certiorari and decided the case.

International Steel & Iron Co v *National Surety Co*, 297 US 657; 56 S Ct 619; 80 L Ed 691 (1936) holds that the rule that this Court will not take jurisdiction to determine a federal question when a state Court decision may rest on a non-federal ground does not apply where a non-federal ground might have been considered by the state court but was not. In the case at bar only denial of the federal right under Michigan law could have been the ground for the decision below. *Again*, Appellees suggest no other.[2]

Neither *Spector Motor Service, Inc* v *McLaughlin*, 323 US 101; 65 S Ct 152; 89 L Ed 101 (1944) nor *Cardinale* v *Louisanna*, 394 US 437; 39 S Ct 1161; 22 L Ed 2d 398 (1969) involved the end of litigation. In the former a

[2] In reality, Appellees ask for dismissal, not because there was another ground, but, because there might have been. They do not say what it could have been. If the Courts are being asked to decide theoretical questions, it is because Appellees, not Appellants, are doing it.

supplementary injuction was continued pending decision in the State Court and in the latter it was noted Habeas Corpus was available to determine the issue. Also, in the former it was noted that the rule Appellees seek to invoke was to avoid "preliminary guesses". In the case at bar there is none.

Perhaps *Lynch* v *People of New York*, 293 US 52; 55 S Ct 16; 79 L Ed 191 (1934) is most illuminating for in its statement of the rule it has the language:

> ". . . or that the judgment as rendered would not have been given without deciding it."

The decisions could not have been given without deciding the questions posed by Appellants.

Other cases cited by Appellees in Argument II do not indicate anything other than the rules discussed above.

CONCLUSION

The Motion to Dismiss should be denied and probable jurisdiction noted.

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